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24 **UNITED STATES DISTRICT COURT**

25 **NORTHERN DISTRICT OF CALIFORNIA**

26 **SAN JOSE DIVISION**

27 TEVA PHARMACEUTICALS USA, INC.,

28 Case No. 5:24-cv-03567-BLF

29 Plaintiff,

30 Honorable Beth Labson Freeman

31 vs.

32 CORCEPT THERAPEUTICS, INC., et al.,

33 **DEFENDANTS' ADMINISTRATIVE
MOTION AND [PROPOSED] ORDER TO
CONTINUE INITIAL CASE
MANAGEMENT CONFERENCE**

34 Defendants.

1 Pursuant to Civil Local Rule 7-11, Defendants Corcept Therapeutics, Inc. and Optime Care
 2 Inc. (collectively “Defendants”) respectfully move for an order continuing the Initial Case
 3 Management Conference in this matter.

4 On June 25, 2024, the Court set the Initial Case Management Conference in this matter for
 5 October 31, 2024, which in turn set the deadline for the parties’ initial Rule 26(f) conference as
 6 October 10. Dkt. 14; *see FED. R. CIV. P. 26(f)(1)*. On August 26, Defendants moved to dismiss Teva’s
 7 complaint and simultaneously sought stays of discovery pending the resolution of its motion to
 8 dismiss. Dkt. 34-37. In their motions to dismiss and accompanying motions to stay, Defendants
 9 identified multiple, potentially dispositive infirmities in Teva’s case that more than justified a limited
 10 stay of burdensome antitrust discovery while the Court evaluated whether Teva stated any viable
 11 claims. On September 9, Teva filed an opposition to the motion to stay discovery that indicated it
 12 intended to oppose Defendants’ motions to dismiss, rather than amend its complaint. Dkt. 38.
 13 Defendants’ reply briefs in support of their motions to stay were due on September 16. *See Civil*
 14 *Local Rule 7-3.*

15 Nevertheless, on September 13—the last business day before briefing on Corcept’s motion to
 16 stay was set to complete—Teva filed an amended complaint, thus voiding Defendants’ pending
 17 motions. Dkt. 39, 40. Teva’s late-filed amendment made only minor changes to its complaint,
 18 including removing certain demonstrably false allegations that Defendants had brought to Teva’s
 19 attention almost three weeks prior, but otherwise making only minor changes to the remainder of the
 20 allegations. Teva’s amendment did not address any of the fundamental infirmities Defendants raised
 21 in their motions to dismiss, and, if anything, only introduced new arguments for dismissal.

22 The timing of Teva’s amendment appears intended to delay a ruling on Defendants’ motions
 23 to stay discovery until after the October 10 deadline for the parties’ Rule 26(f) conference. By
 24 delaying the Court ruling until after the Rule 26(f) conference, Teva apparently hopes to begin seeking
 25 burdensome and competitively sensitive discovery (regardless of the viability of its claims and the
 26 other equitable bases for staying discovery) before the Court has an opportunity to rule on any motion
 27 to stay discovery.

28 Defendants intend to file a renewed joint motion to dismiss and renewed motion to stay

1 discovery pending that dismissal motion. However, given Teva's tactically-late-filed amended
2 complaint, it is no longer possible for the Court to rule on Defendants' motion to stay before the
3 October 10 Rule 26(f) deadline, nor the corresponding case management report and initial disclosures,
4 each then due by October 24, 2024. That is particularly true because Teva's counsel has requested
5 that Defendants agree to a hearing on the dismissal motions in late February 2025, in order to
6 accommodate one of Teva's core attorneys' parental leave. Defendants are more than fine with that
7 request due to basic professionalism and humanity. However, their willingness to accommodate such
8 an important life event does not mean they should have to endure three months of sprawling and
9 ultimately futile antitrust discovery due to their flexibility. Thus, in order to allow the Court a full
10 opportunity to rule on Defendants' motion to stay discovery and thereby avoid unnecessary disputes
11 prompted by Teva's tactics, Corcept respectfully requests that the Court continue the Initial Case
12 Management Conference currently set for October 31, which will in turn adjust the deadline for the
13 parties' Rule 26(f) conference. *See* FED. R. CIV. P. 26(f)(1).

14 As for the specific date, Defendants believe the Court should continue the Initial Case
15 Management Conference for as long as the Court deems proper. Under the parties' stipulated briefing
16 schedule, *see* Dkt. 42, Defendants will submit their renewed motion to stay discovery concurrently
17 with their renewed motion to dismiss on October 14, which will result in the parties completing
18 briefing on the motion to stay on November 4. Depending on the Court's preferences, that would
19 mean that an Initial Case Management Conference in December or January may provide enough time
20 to assess the parties' submissions and decide whether the Court believes a stay is warranted.
21 Defendants also do not object to a February 2025 Initial Case Management Conference, on the same
22 date as the motion to dismiss hearing.

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[PROPOSED] ORDER

IT IS SO ORDERED. The Initial Case Management Conference scheduled for October 31, 2024 is hereby continued. The Initial Case Management Conference will instead be held on _____.

DATED: _____

The Honorable Beth Labson Freeman
United States District Judge

1 DATED: September 18, 2024

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3 By: /s/ Robert W. Stone
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CIVIL LOCAL RULE 5-1 ATTESTATION

I, Robert W. Stone, am the ECF user whose credentials were utilized in the electronic filing of this document. In accordance with Civil Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the signatories listed above.

6 | DATED: September 18, 2024

By /s/ Robert W. Stone
Robert W. Stone

CERTIFICATE OF SERVICE

13 I hereby certify that on this 18th day of September 2024, I electronically transmitted the
14 foregoing document to the Clerk's Office using the CM/ECF System, causing it to be electronically
15 served on all attorneys of record.

By /s/ Robert W. Stone
Robert W. Stone